

## REMARKS/ARGUMENTS

### Remarks concerning the amendments to the specification

The Government sponsorship information has been amended. No new matter is added.

### Remarks concerning amendments to claims

Claims 14 and 16-22 remain in this application. Claim 14 is amended. Claim 15 is canceled.

Claims 16-22 are original.

### Response to rejections

#### Rejections under 35 USC 103

The Office Action has rejected claims 14, 17 and 21-22 as being unpatentable over Kline (Pub. No.: US 2004/0211054) in view of Fishman (US Pat: 5271401) and further in view of Griffith et al (US Pat: 6197575).

The Office Action states that Kline discloses lasers operating at the near infrared [see 0055] to illuminate the lung.

The Applicant respectfully avers that **Kline does not teach illuminating human or animal tissue**, but instead teaches “[0046] **Measuring unit 30** comprises a patient mouthpiece 32 connected in fluid communication to a **breathing tube 34 having an open end 42 through which air can be inhaled or exhaled**. Measuring unit 30 **further comprises three sensors**; a pneumotach 36, a capnometer 38, and an oxygen monitor 40. **The three sensors are situated in series and in-line with breathing tube 34 for simultaneously measuring the flow, carbon**

dioxide, and oxygen levels of inhaled and exhaled air. Infrared and paramagnetic type sensors are preferred respectively.” [See FIG. 4] (emphasis added by Applicant)

The Applicant has amended independent claim 14 to more specifically recite the invention, where claim 14 recites an imaging system having a means for administering varying levels of vasoactive agents to a human or animal subject having a region of interest, where the region of interest is a human or animal tissue, a near infrared light source directed at the region of interest, an in vivo image acquisition means for acquiring in vivo images of the region of interest before and during administration of the varying levels of vasoactive agents, where the varying levels of vasoactive agents include CO<sub>2</sub> and O<sub>2</sub> administered in opposition or alternation, and a processing means for analyzing the in vivo images to identify vasculature associated with angiogenic vasculature in cancerous tumors. (emphasis added by Applicant)

The Applicant respectfully avers that because Kline uses an analyzing chamber to measure exhaled gases, and does not analyze the gases in vivo using a near infrared light source directed at human or animal tissue, the teachings of Kline are not germane and the teachings of Fishman and Griffith alone do not teach the claimed invention, therefore the rejection to claim 14 is moot. (emphasis added by Applicant)

The Applicant respectfully avers that because claims 16-22 are dependent on claim 1, these rejection are now moot.

Conclusion

Applicant hereby submits a bona fide attempt to address the rejections in the Office Action and provide arguments why the present claims are patentable over the cited references. The Examiner is invited to telephone the undersigned at 650-424-0100 for clarification or any suggested actions such as an Examiner's Amendment to advance the prosecution of the present application. Applicant kindly requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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